

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

U.S. DISTRICT COURT
FILED AT CHARLOTTE, NC
APR - 1 1997
NORTHERN DISTRICT OF WV
OFFICE OF THE CLERK

UNITED STATES OF AMERICA,
PLAINTIFF,

v. ::

CRIMINAL NO. 1:96CR43-02

JAMES R. ROGERS, a/k/a Rich,
DEFENDANT.

**UNITED STATES' MOTION FOR THE PRODUCTION OF
HANDWRITING EXEMPLARS BY THE DEFENDANT**

Comes now the United States of America and William D. Wilmoth, United States Attorney for the Northern District of West Virginia, by David E. Godwin, First Assistant United States Attorney, and moves the Court to enter an order directing the defendant, James R. Rogers, to provide handwriting exemplars. In support of this motion, The United States sets forth the following:

- 1) The handwriting exemplars are needed to compare with documentary evidence in this case.
- 2) The exemplars are not testimonial in nature and are not protected by the privilege against compulsory self-incrimination. *Gilbert v. California*, 388 U. S. 263, 87 S. Ct. 1951, 18 L.Ed 2d 1178 (1967); *United States v. Dionisio*, 410 U. S. 1, 93 S. Ct. 764, 35 L.Ed.2d 67 (1973); *United States v. Wade*, 388 U. S. 218, 87 S. Ct. 1926, 18 L.Ed.2d 1149 (1967); also see, *United States v. Decker*, 411 F.2d 306 (4th Cir. 1969), and *United States v. Rosinsky*, 547 F.2d 249 (4th Cir. 1977). "The taking of handwriting exemplars in the absence of counsel, even if involuntary, does not violate the

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accused's Fifth or Sixth Amendment rights, when the exemplars are used for identification purposes,
... " *United States v. McEachern*, 675 F.2d 618, 623 (4th Cir. 1982).

Wherefore the United States moves the Court to enter an order directing the defendant to provide handwriting exemplars.

Respectfully submitted,

UNITED STATES OF AMERICA

WILLIAM D. WILMOTH
UNITED STATES ATTORNEY

By: David E. Godwin
David E. Godwin
First Assistant United States Attorney

CERTIFICATE OF SERVICE

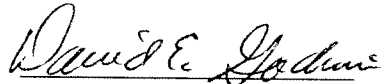
I, David E. Godwin, First Assistant United States Attorney for the Northern District of West Virginia, do hereby certify that the foregoing UNITED STATES' MOTION FOR THE PRODUCTION OF HANDWRITING EXEMPLARS BY THE DEFENDANT was served upon the defendant by placing a copy thereof in the United States Mail, postage prepaid, addressed to:

Floyd Raymond Looker, Jr., defendant *pro se*, Northern Regional Jail, RD # 2, Box 1, Moundsville, WV 26041

William Cipriani, standby counsel for Floyd Raymond Looker, 634 Charles Street, Wellsburg, WV 26070

Gary B. Zimmerman, counsel for James R. Rogers, Suite 304, 100 Ross Street, Pittsburgh, PA 15219

Dated this 1st day of April, 1997.



David E. Godwin
First Assistant U. S. Attorney
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Clarksburg, WV 26302-0750